

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Implementation of the Pay Telephone)	
Reclassification and Compensation)	CC Docket No. 96-128
Provisions of the Telecommunications)	
Act of 1996)	NSD File No. L-99-34
)	
RBOC/GTE/SNET Payphone Coalition)	
Petition for Clarification)	

REPLY COMMENTS OF
QWEST COMMUNICATIONS INTERNATIONAL INC.

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QWEST COMMUNICATIONS INTERNATIONAL INC.**

Qwest Communications International Inc. ("Qwest"), respectfully submits this reply to the comments filed in connection with the Federal Communications Commission's ("Commission") *Further Notice of Proposed Rulemaking* ("Notice") in the above-referenced proceeding.

INTRODUCTION AND SUMMARY

Qwest believes that the recommendations it has put forth in its comments, namely to require an annual certification of the number of compensable calls and the disclosure of additional information regarding carriers' completed calls and 8XX numbers, will improve the tracking of calls routed to resellers and platform service providers without unduly burdening any one segment of the industry. Many of the commenters have instead advanced proposals that simply shift the problem from carriers to payphone service providers ("PSPs") or vice versa. Some aspects of other commenters' proposals, however, can work to simplify or render more

effective the payphone compensation system. Qwest discusses several of these recommendations below.

DISCUSSION

I. Qwest's Recommendations Are the Most Balanced and Workable Proposals Submitted by Members of the Industry to Improve the Payphone Compensation System.

Qwest stated in its comments that it is one of the largest PSPs and interexchange carriers (“IXCs”) in the country, as well as a facilities-based reseller, a local exchange carrier and a provider of prepaid calling card services. Because Qwest represents all of the divergent factions of the industry that are impacted by the payphone compensation rules, its proposals in this proceeding comprise a balanced effort to improve the effectiveness of the compensation scheme and avoid simply placing most of the costs and burdens on one segment of the industry.

Qwest's hardships dealing with the payphone compensation system both as a PSP and as an IXC are not unlike the experiences expressed by many of the commenters in this proceeding. What is uniquely reflected in Qwest's comments here, however, is the business reality that it cannot simply shift the tracking and compensation burdens from the PSP or the IXC side of the house to the other. Many of the commenters advocate the adoption of the “first switch” or the “last switch” rule depending on whether the commenter represents a PSP or an IXC viewpoint. Many of the participants simply readvocate approaches previously rejected by the Commission without submitting much in the way of new or substantive proposals.

A well-known problem that is pervasive in the comments is the inability to accurately track and account for calls that are routed to a reseller or to a platform service provider. Qwest believes that its proposed certification requirement under either the “first switch” or the “last switch” rule, will impose some needed pressure on resellers to accurately report completed calls.

In addition, Qwest's proposals require that additional information be provided to PSPs about the identification of resellers and the 8XX numbers for which they are responsible to pay compensation. Particularly if the Commission reverts to the "last switch" rule, the information flow to PSPs must increase substantially to make it easier and faster to identify switch-based resellers ("SBRs") responsible to pay.

II. While There Is Clearly No Quick Fix to the Payphone Compensation System, Portions of the Commenters' Proposals May Help Improve it.

A. Annual Certification Will Be More Effective than Requiring Verification of Call-Tracking Systems.

Nearly every commenter expressed difficulty with calls routed to SBRs. At least one commenter proposes requiring an independent third-party verification of resellers' tracking systems.¹ This proposal is a cosmetic solution to the general unreliability of reseller call counts. The proposal contemplates a voluntary process whereby SBRs would choose whether to subject their tracking systems to an independent auditor. Even if mandatory, a one-time or even an annual verification process does very little to address the potential for arbitrage described in Qwest's comments. With or without a reliable tracking system, a reseller can assess a surcharge to its customers for 500 completed calls, report 200 completed calls to the IXC, and neither the IXC nor the PSP would be any wiser about the situation.

Qwest believes that its proposal requiring every carrier to submit an annual certification to the Commission containing the total number of completed calls and the total number of surcharges assessed on the carrier's customers more effectively addresses the lack of reliability

¹ See, e.g., Comments of WorldCom, Inc. at 27.

and widespread concern over calls routed to SBRs. WilTel Communications, LLC, also recommends an annual certification, but one limited to SBRs.²

Furthermore, several IXC contend the “first switch” rules require them, in effect, to function as guarantors for SBR payments and data.³ If the Commission adopts Qwest’s proposed annual certification, IXCs would be relieved of this burden. Qwest urges the Commission to develop an enforcement scheme to support the certification, in addition to which, such certifications would be submitted under penalty of perjury. Consequently, PSPs would look to the SBRs’ certifications instead of the IXCs to validate the call counts and payments submitted on behalf of SBRs.

B. Additional Reporting Obligations Are Needed.

Several commenters propose that either IXCs or resellers provide PSPs additional information following the close of the quarter to assist them in collecting payphone compensation. While all of the commenters’ proposals fall short of Qwest’s recommendations regarding the disclosure of information, particularly if the “last switch” rule is adopted, Qwest believes that some of these proposals could be helpful to Qwest as a PSP and therefore it endorses them.

- Qwest agrees that IXCs should be required to provide PSPs the names and addresses of the IXC’s resellers for each 8XX number identified.⁴ This information would be most useful to PSPs under the “last switch” rule. Qwest believes this data should be provided to PSPs as part of a quarterly report because of the frequent reassignment of 8XX

² See Comments of WilTel Communications, LLC at 5-6.

³ See Comments of Global Crossing North America, Inc. at 8-10; Comments of AT&T Corp. at 4.

⁴ See Comments of AT&T Corp. at 9.

numbers. Qwest's own recommendation submitted in its comments applies to all carriers, not just the first carrier in line or the IXC, and requires each carrier to publish on its website a list of 8XX numbers it services for which another party is responsible to pay compensation, and to provide the name and contact information for that party. In this way, each carrier can learn whether another carrier (presumably the IXC on whose behalf the SBR is reselling services) is attributing certain 8XX numbers to it. This should allow disputes over which carrier is responsible to pay on particular 8XX numbers to be brought to light and resolved more quickly.

- Qwest also agrees that, on a going-forward basis,⁵ carriers should provide PSPs with call detail records⁶ for completed calls. Here again, Qwest believes that this information is most useful under the “last-switch” rule because of the increased difficulty in tracking calls that are routed to a reseller's platform.

By contrast, several IXC commenters recommend that, in conjunction with returning to the “last switch” rule, IXCs should be required to provide PSPs a quarterly report with the total number of calls that the IXC routed to a reseller's platform.⁷ It is Qwest's view that receiving data on the total number of calls, mostly incomplete calls, would result in little useful information, the benefit of which is far outweighed by the time, effort and expense associated with reviewing the volume of data provided. Consequently, Qwest believes this proposal does not improve the quality of the information that is currently required to be provided to PSPs.

⁵ Because carriers were never required to provide call detail records to PSPs in the past, most carriers probably would need a reasonable amount of time to change their call-tracking systems to implement such a rule on a going-forward basis.

⁶ See Comments of Bulletins at 23.

⁷ See Comments of WorldCom, Inc. at 27-28; Comments of Sprint Corporation at 22.

C. Calls Routed to Non-carriers Are Equally Subject to Payphone Compensation.

In its comments, Bulletins raised the issue of non-carrier platform providers who use 8XX numbers for whom carriers fail to pay compensation.⁸ Qwest has experienced a similar problem that it believes the Commission can resolve in this rulemaking proceeding.

Some carriers have refused to pay compensation for calls routed to parties using 8XX numbers who were deemed “exempt” non-carriers under the Commission’s *Fifth Order on Reconsideration*.⁹ In the *Fifth Order*, the Commission sought to develop an allocation methodology for the Interim Period’s *per phone* compensation, applicable between November 7, 1996 through October 6, 1997.¹⁰ In doing so, the Commission compiled RBOC payphone call data to arrive at a statistical sampling of the number of payphone calls routed to each carrier.¹¹ The Commission excluded call data involving non-carriers who were nevertheless assigned carrier identification codes (“CICs”) when, for instance, they had dedicated private line service, such as J.C. Penney.¹² The Commission “exempted” calls routed to these non-carrier entities from being counted in the *per phone true-up process* because, “such entities had no notice that they could be responsible for payphone compensation,” and thus, the Commission decided it “will not hold them liable.”¹³

⁸ Comments of Bulletins at 9-14.

⁹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Fifth Order on Reconsideration and Order on Remand, 17 FCC Rcd. 21274, 21291 ¶ 53 (2002) (*Fifth Order*).

¹⁰ *Id.* at 21286-93 ¶¶ 34-59.

¹¹ *Id.* at 21290-91 ¶¶ 49-52.

¹² *Id.* at 21291 ¶ 53. The full list of “exempted” entities is found at Appendix D of the *Fifth Order*.

¹³ *Id.* at n.89.

Many carriers have seized on the “exemption” language in the *Fifth Order* to ignore their compensation obligations. The Commission’s *Fifth Order* did not, however, exempt *carriers* who route calls to these non-carrier entities from their payphone compensation responsibility outside the context of the Interim Period’s *per phone* compensation true-up. Carriers who route calls to these non-carrier entities should be required to pay *per call* compensation for completed calls.

For instance, credit card processing companies, such as Transaction Network Services, have business customers who use payphones to make credit card validation calls through their service. These customers pay for the service the processing companies provide, namely to call credit card companies to obtain validation on a cardholder.¹⁴ The credit card processing companies contract with an underlying carrier to deliver the calls. Similar to other dial-around situations, the carrier should be paying compensation for each credit card validation call that is completed, and it may assess a surcharge on its customers -- the credit card processing companies -- if it chooses. The Commission should clarify that its decision to exempt non-carrier companies from the *per phone* calculation made in the *Fifth Order*’s true-up process does not exempt carriers from the general obligation to pay compensation on completed calls.

D. Redefinition of a Completed Call Will Not Pass Legal Muster.

Several parties propose redefining a completed call as a call delivered to an SBR’s platform.¹⁵ Qwest explained in its own comments that a call delivered to a platform has two legs: the first leg of the call, or the “inbound” call, is delivered by the IXC to the platform; and the second leg of the call, or the “outbound” call, is delivered by the reseller or platform service

¹⁴ Moreover, much of this business is being conducted using payphone lines instead of purchasing business lines to conduct their business operations.

¹⁵ Comments of AT&T Corp. at 9-10; Comments of Sprint Corporation at 24.

provider to the called party. Because the first leg, or inbound call, does end at the platform, the Commission might consider the call to a platform to be a completed call consistent with Congress's mandate under Section 276 of the Act. Before it may reach this conclusion, however, the Commission would have to ignore the simple fact that a caller normally does not intend to actually call the platform as the true end point. If the endpoints of a call are measured by the calling and called parties, the platform is never the "called party."¹⁶

In addition, Qwest noted in its comments that such a redefinition of a completed call would seriously harm the prepaid calling card industry, which is highly competitive, operates on small margins, and contains a significant number of small businesses.¹⁷

Global Crossing argues that a timing surrogate or a call-attempt method should be used to count completed calls instead of actually counting the number of calls answered by the called party.¹⁸ Qwest agrees that a call duration surrogate would eliminate the heart of the difficulty of tracking calls to the called party. Unfortunately, the Commission rejected the timing surrogate approach in the *First Payphone Order* as being inconsistent with Section 276's mandate that PSPs be compensated for each and every completed call.¹⁹ A call-attempt methodology would likewise be legally deficient. In addition, Qwest believes that the Commission will be unable to arrive at a call duration (or call attempt) surrogate that is acceptable to the various factions of the industry without several rounds of additional proceedings and court challenges. The predictable

¹⁶ If the Commission were to redefine a completed call in this way, it would also undermine its long held approach to determining the jurisdiction of a call as being based on the locations of the calling and called parties. See *In the Matter of AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, Comments of Qwest Services Corporation at 4-5 and n.8.

¹⁷ Comments of Qwest Communications International Inc. at n.15.

¹⁸ Comments of Global Crossing North America, Inc. at 6-8.

¹⁹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd. 20541, 20573-74 ¶ 63 (1996).

delays and further uncertainty surrounding payphone compensation that will exist while a call completion proxy is fully vetted and litigated ultimately render this approach unworkable.

E. A Caller-Pays Approach Is a Straight-Forward Solution that Primarily Hurts the Platform Services Industry.

IXC commenters propose a caller pays-approach.²⁰ This is undoubtedly a simple, straight-forward solution that eliminates the PSPs' collectability problem. Unfortunately, a caller-pays approach would further suppress payphone use, thereby harming the PSPs' overall business. It would hurt platform services providers (*e.g.*, prepaid access, subscriber toll-free, and access 800 services) even more, and limit the calling choices available to the public. These services would be much less appealing to consumers if they are denied the convenience of making a coinless call and instead needed to find pocket change to make a payphone call under many circumstances.

F. IXC's Lack Compliance Leverage over SBRs.

Several IXC commenters complain that they lack sufficient leverage over SBRs under their contracts to compel their full compliance with the payphone compensation obligations under the "first switch" rule.²¹ Qwest's own experience as an IXC is similar in this regard, having accumulated several million dollars in disputed bills with customers over payphone compensation surcharges. American Public Communications Counsel's ("APCC") suggestion that an IXC can simply cancel its contract with a reseller customer if it fails to pay its bills

²⁰ Comments of WorldCom, Inc. at 30; Comments of Sprint Corporation at 19.

²¹ Comments of WorldCom, Inc. at 20-22; Comments of Sprint Corporation at 14-15.

simply ignores the reality of the market.²² As WorldCom points out, no IXC “would be willing to risk losing 98% of its revenues from a customer over a dispute involving 2% of its bill”²³

APCC’s argument that IXCs can employ selective call blocking as an enforcement tool against their SBR customers is similarly naïve.²⁴ An IXC does not know on which 8XX numbers the customer has underpaid or is refusing to pay its surcharge. The IXC’s recourse, therefore, is to block all 8XX numbers belonging to that customer and effectively cancel its contract. In a very competitive wholesale market, Qwest and other IXCs do not have the leverage over their customers that APCC assumes so as to cut off customers who challenge a relatively small portion of their bill.

The inability of IXCs to obtain full cooperation and disclosure through contractual arrangements with their customers on the actual number of compensable calls is further support for Qwest’s certification proposal. The requirement of an annual certification made to the Commission regarding the number of completed calls reported and the number of calls on which a surcharge is assessed should help persuade SBRs to accurately report call completion information. Thus, Qwest’s certification proposal would relieve some of the pressure for IXCs to exercise a policing role over their customers and thereby undermine their business relationships with these customers.

CONCLUSION

The proposals submitted in Qwest’s Comments clearly reflect a compromise between the various segments of the industry, without shifting the entire burden of the payphone compensation rules to one segment or another, as do the proposals of many of the commenters in

²² Comments of the American Public Communications Council at 12-13.

²³ Comments of WorldCom, Inc. at 21.

²⁴ Comments of the American Public Communications Council at 14-15.

this proceeding. For the reasons set forth here and in Qwest's Comments, Qwest respectfully requests the Commission to adopt the reporting and disclosure obligations Qwest has proposed under either the "first switch" or the "last switch" rule.

Respectfully submitted,

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July 3, 2003

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY**
COMMENTS OF QWEST COMMUNICATIONS INTERNATIONAL INC. to be 1) filed
with the FCC via its Electronic Comment Filing System, 2) served via e-mail on the FCC's
duplicating contractor Qualex International, and 3) served via First Class United States mail,
postage prepaid on the parties listed on the attached service list.

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